

**NOT FOR PUBLICATION**

**JUL 07 2006**

**UNITED STATES COURT OF APPEALS**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

TOMAS CHILDRES-CORIA;  
AUDEBERTO CHILDRES; FLOREIDA  
CHILDRES; GILIVALDO  
CHILDRES; MARVELLA  
CHILDRES,

Petitioners,

v.

ALBERTO R. GONZALES, Attorney  
General,

Respondent.

No. 04-71424

Agency Nos. A79-594-289  
A79-594-290  
A79-594-291  
A79-594-292  
A79-594-293

MEMORANDUM\*

On Petition for Review of an Order of the  
Board of Immigration Appeals

Argued and Submitted June 9, 2006  
Seattle, Washington

Before: THOMPSON, TASHIMA, and CALLAHAN, Circuit Judges.

Tomas Childres-Coria (“Childres-Coria”), and, derivatively, his four  
minor children (Audeberto, Floreida, Gilivaldo, and Marvella), natives and

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\* This disposition is not appropriate for publication and may not be cited  
to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

citizens of Mexico, petition for review of a decision by the Board of Immigration Appeals (“BIA”) affirming an immigration judge’s (“IJ”) denial of their applications for asylum and withholding of removal. We grant the petition for review, and remand to the BIA for subsequent proceedings in light of this decision.

Both parties agreed at oral argument that the BIA fully credited Childeres-Coria’s testimony and reviewed de novo petitioners’ asylum and withholding claims. “Where . . . the BIA reviews the IJ’s decision de novo, our review is limited to the BIA’s decision . . . .” *Shah v. INS*, 220 F.3d 1062, 1067 (9th Cir. 2000) (internal quotation marks omitted) (quoting *Cordon-Garcia v. INS*, 204 F.3d 985, 990 (9th Cir. 2000)).

In order to establish “past persecution, an applicant must show: (1) an incident, or incidents, that rise to the level of persecution; (2) that is on account of one of the statutorily-protected grounds; and (3) is committed by the government or forces the government is either unable or unwilling to control.” *Navas v. INS*, 217 F.3d 646, 655–56 (9th Cir. 2000) (footnotes and internal quotation marks omitted). Childeres-Coria testified that four family members, who were all members of the Democratic Revolutionary Party, were killed by affiliates of the rival Institutional Revolutionary Party (“PRI”). Childeres-Coria further testified

that he was beaten, threatened, and physically pursued by the same contingent of PRI affiliates.

The BIA denied petitioners' asylum claim, apparently concluding that they failed to establish the first requirement for a showing of past persecution (i.e., that the past incidents rose to the level of persecution). The BIA explained that "[a]lthough the Immigration Judge found the lead respondent credible with respect to his past experiences and those of some of his family members in Mexico, the respondents have not themselves been the victims of past persecution in Mexico." In essence, the BIA concluded that because the gravest incidents (i.e., the killings) befell family members other than the petitioners themselves, the family members' mistreatment did not rise to the level of persecution from the petitioners' perspective.

We disagree. The "harass[ment]" of family members is relevant to determining past persecution. *See Gonzales v. INS*, 82 F.3d 903, 906, 910 (9th Cir. 1996) (finding that petitioner suffered past persecution in part because a group had permanently disabled her stepfather with a bomb blast, stripped her mother of land, incarcerated her brother and ex-husband, and publically beaten her sister-in-law). Here, a group killed four of Childeres-Coria's family members.

In addition to their independent significance, the killings in this case enhanced the responsible group's threats directed at Childeres-Coria and gave meaning to his physical abuse. Amidst killing his four family members one by one, the group threatened Childeres-Coria convincingly enough that he hid for days at a time in a nearby mountainous refuge. *See Kaiser v. Ashcroft*, 390 F.3d 653, 658 (9th Cir. 2004) (“What matters is whether the group making the threat has the will or the ability to carry it out.” (quoting *Bolanos-Hernandez v. INS*, 767 F.2d 1277, 1285 (9th Cir. 1984))). One member of the group—a man Childeres-Coria knew to be his brother's killer—physically beat Childeres-Coria. *See Chand v. INS*, 222 F.3d 1066, 1073 (9th Cir. 2000) (“Physical harm has consistently been treated as persecution.”).

No reasonable fact finder could doubt that these incidents, taken in conjunction, rise to the level of persecution. Childeres-Coria, therefore, successfully fulfilled the first of three requirements for demonstrating past persecution. We remand this case to the BIA to proceed from that point. *See INS v. Ventura*, 537 U.S. 12, 16 (2002). It should consider the remaining two requirements for past persecution (i.e., whether the mistreatment was on account

of a statutorily protected ground, and perpetrated by the government or forces the government is unwilling or unable to control), as well as all other relevant issues.<sup>1</sup>

**PETITION FOR REVIEW GRANTED; REMANDED TO BIA.**

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<sup>1</sup> The BIA stated that Childeres-Coria failed to demonstrate that he was unable to safely and reasonably relocate within Mexico. As the BIA recognized, however, a petitioner only bears that burden in the absence of past persecution. *Kaiser*, 390 F.3d at 659; 8 C.F.R. § 1208.13(b)(3)(i). If, on remand, Childeres-Coria demonstrates the required elements for past persecution, it will be the government's burden to prove that he can safely relocate within Mexico. *Melkonian v. Ashcroft*, 320 F.3d 1061, 1070 (9th Cir. 2003); 8 C.F.R. § 1208.13(b)(3)(ii).